

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

Katosk Pantoliano,  
Petitioner,

**FILED**  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

★ APR 22 2011 ★

Versus,

**BROOKLYN OFFICE**  
Criminal Case No:  
10-068 (S-1)(SJ)

United States of America,  
Respondent.

The Honorable  
Sterling Johnson

PETITIONER KATOSH PANTOLIANO MOTION TO DISMISS  
INDICTMENT NO. 10-068(S-1)(SJ),  
PURSUANT TO RULE 12(b)(2), OF THE  
FEDERAL RULES OF CRIMINAL PROCEDURE.

COMES NOW, Petitioner Katosh Pantoliano, Pro-se, from Metropolitan Detention Center, Brooklyn, New York, respectfully requesting this Honorable Court to Dismiss Indictment Number. 10-068(S-1)(SJ), pursuant to Rule 12(b)(2), of the Federal Rules of Criminal Procedure. Petitioner Katosh Pantoliano thereof states the alleges:

Petitioner Katosh Pantoliano was mentioned in a five Court indictment as followe:

COUNT ONE:

In or about and between April 2008 and September 2008,

both dates being approximate and inclusive, within the Eastern District of New York, the Defendant Katosh Pantoliano, also known as "K," together with others, did knowingly and intentionally conspire to obstruct, delay and affect commerce, and the movement of articles and commodities in commerce, by robbery, to wit, the robbery of narcotics traffickers and gambling establishments, in violation of Title 18 U.S.C. 1951(a) and 3551 et seq.

COUNT TWO:

In or about and between April 2008 and September 2008, both dates being approximate and inclusive, within the Eastern District of New York, the Defendant Katosh Pantoliano, also known as "K," together with others, did knowingly and intentionally use and carry a firearm during and in relation to a crime of violence, to wit: the crime charged in Count One, and did knowingly and intentionally possess said firearm in furtherance of such crime of violence, which firearm was brandished, in violation of Title 18 U.S.C. 924(c)(1)(A)(i), 924(c)(1)(A)(ii), 2 and 3551.

COUNT THREE:

In or about September 2009, within the Eastern District of New York, the defendant Katosh Pantoliano, also known as "K," together with others, did knowingly and intentionally conspire to obstruct, delay and affect commerce, and the movement of articles and commodities in commerce, by robbery, to wit: the robbery of United States Currency from John Doe, an employee of a restaurant located in Brooklyn, New York, whose identity is known to the Grand Jury, in violation of Title 18 U.S.C. Section 1951(a), and 3551.

COUNT FOUR:

On or about September 28, 2009, within the Eastern District of New York, the defendant Katosh Pantoliano, also known as "K," together with others, did knowingly and intentionally obstruct, delay and affect commerce, and the movement of articles and commodities in commerce, by robbery, to wit: the robbery of United States Currency from John Doe, an employee of a restaurant located in Brooklyn, New York, in violation of Title 18 U.S.C. 1951(a), 2, and 3551 et seq.

COUNT FIVE:

On or about September 28, 2009, within the eastern District of New York, the defendant KatoshPantoliano, also known as "K," together with others, did knowingly and intentionally use and carry a firearm during and in relation to one or more crimes of violence, to wit: the crime charged in Count Three and Four, and did knowingly and intentionally possess said firearm in furtherance of such crimes of violence, which firearm was brandished and discharged, in violation of Title 18 U.S.C. Section 924(c)(1)(A)(i), 924(c)(1)(A)(ii), 924(c)(1)(A)(iii), 2 and 3551.

ISSUE

KATOSH PANTOLIANO HAS BEEN DETAINED/INCARCERATED IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION.

Petitioner Katosk Panroliano Superseding Indictment was based on false evidence which was known by the Prosecution, in violation of the DueProcess Clause of the United States Constitution.

In, Drake-v-Protuondo, 553 F.3d 230 (2d. Cir. 2009), The Second Circuit Held, " Since at least 1935, it has been the established law of the United States that a conviction obtained through

testimony the prosecutor known to be false is repugnant to the constitution. See, Mooney-v-Holohan, 294 U.S. 103, 112, 55 S.Ct 340, 79 L.Ed. 791 (1935). This is so because, in order to reduce the danger of false convictions, we rely on the prosecutor not to be simply a party in litigation whose sole object is the conviction of the defendant before him. The Prosecutor is an officer of the court whose duty is to present a forceful case and truthful case to the jury, not to win at any cost. See, e.g. Jenkins-v-Artuz, 294 F.3d 284, 296 n. 2 (2d. Cir. 2002)(noting prosecutor under New York State Law is to seek justice not merely to convict).

In, Giglio-v-United States, 405 U.S. 150, 31 L.Ed.2d 104, 92 S.Ct 763 (1972)," The Supreme Court of the United States held," a conviction obtained through the knowing use of false evidence must fall under the Due Process Clause, under the Fourteenth Amendment of the United States Constitution. In, Napue-v-Illinois, 360 U.S. 264, 3 L.Ed.2d 1217, 79 S.Ct 1173 (1959)," The Supreme Court of the United States held," in applying the rule that a conviction obtained through the use of false evidence known to be such representative of the state and permitted by them to go uncorrected must fall under the Due Process Clause, under the fourteenth Amendment of the United States Constitution.

In Opper-v-United States, 99 L.Ed 101, 348 U.S. 84 (1954), " The United States Supreme Court held,' it is clear that there was substantial independent evidence to establish directly the truthfulness of Petitioner's admission that he paid the government employee money. but the direct corroborative

evidence tending to prove the truthfulness of Petitioner's statements would not establish a corpus delicti of the offense charged. Rather it tends to establish only one element of the ~~offense-payment~~ to of money. The government therefore had to prove the other element of the corpus delicti-rendering of services by the government employee-entirely by independent evidence.

The governments informants testify to the fact that Katosh Pantoliano, committed several crimes, but there is no corpus delicti to prove that Petitioner committed any crime.

Katosh Pantoliano did not violated the mentioned Statutes on his indictment, and has been detained in violation of the Due Process Clause of the United States Constitution.

Defendant is entitles to release where the court has determined that he was convicted of his federal rights to due process of the law. Cagle-v-Davis, 520 F. Supp. 297, 633 F.2d 1070, Ramirez-v-United States, 185 F. Supp.2d (E.D.N.Y 2001).

In, Harris-v-United States, 404 U.S. 1232, 30 L.Ed.2d 25, 92 S.Ct 10, Justice Douglas, of the United States Supreme Court held," a conviction based on a record lacking any relevant evidence as to crucial elements of the offense charged violates due process.

In, Triestman-v-United States, 124 F.3d 361 (2d. Cir. 1997), The Second Circuit held," continuning incarceration

of an innocent person violates the Eight Amendment," Cruel and Unusual Punishment" of the United States Constitution. See, Herrera-v-Collins, 506 U.S. 390, 432 n2, 113 S.Ct 853, 877 n2 122 L.Ed.2d 203 (2003). The Second Circuit held," every day in prison would be cruel and unusual punishment for a crime having a cold common." Triestman.

CONCLUSION

WHEREFORE, Petitioner Katosh Pantoliano respectfully requesting that this Honorable Court dismiss Superseding Indictment No. 10-068 (S-1)(SJ), against this Petitioner and order his release.

April 16, 2011

Respectfully Submitted,

Katosh Pantoliano  
Katosh Pantoliano, Pro-se  
Register No. 77941-053  
Metropolitan Detention Center  
Post Office Box 329002  
Brooklyn, New York 11232

CERTIFICATE OF SERVICE

I, Katosh Pantoliano, duly sworn that a copy of  
Petitioner motion to dismiss Indictment No. 10-068(S-1)(SJ),  
pursuant to Rule 12(b)(2), of the Federal Rules of Criminal  
Procedure was sent United States First Class Mail to the  
following:

Ali **KAZEMI**

Assistant United States Attorney  
FOR THE EASTERN DISTRICT OF NEW YORK  
271 Cadman Plaza, East  
Brooklyn, New York 11201

April 16, 2011

Respectfully Submitted,

*Katosh Pantoliano*

Katosh Pantoliano, Pro-se  
Register No. 77941-053  
Metropolitan Detention Center  
Post Office Box 329002  
Brooklyn, New York 11232

JPL:AK/CAC  
F.#2010R00123

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA

- against -

KATOSH PANTOLIANO,  
also known as "K," and  
ANTHONY TUOZZO,

Defendants.

S U P E R S E D I N G  
I N D I C T M E N T

Cr. No. 10-068 (S-1) (SJ)  
(T. 18, U.S.C., §§ 924,  
924(c)(1)(A)(i),  
924(c)(1)(A)(ii),  
924(c)(1)(A)(iii), 924(d),  
981(a)(1)(C), 1951(a), 2  
and 3551 et seq.; T. 21,  
U.S.C., § 853(p);  
T. 28, U.S.C., § 2461(c))

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THE GRAND JURY CHARGES:

COUNT ONE

(Hobbs Act Robbery Conspiracy)

1. In or about and between April 2008 and September 2008, both dates being approximate and inclusive, within the Eastern District of New York, the defendant KATOSH PANTOLIANO, also known as "K," together with others, did knowingly and intentionally conspire to obstruct, delay and affect commerce, and the movement of articles and commodities in commerce, by robbery, to wit: the robbery of narcotics traffickers and gambling establishments.

(Title 18, United States Code, Sections 1951(a) and 3551 et seq.)



COUNT TWO

(Brandishing of a Firearm During a Crime of Violence)

2. In or about and between April 2008 and September 2008, both dates being approximate and inclusive, within the Eastern District of New York, the defendant KATOSH PANTOLIANO, also known as "K," together with others, did knowingly and intentionally use and carry a firearm during and in relation to a crime of violence, to wit: the crime charged in Count One, and did knowingly and intentionally possess said firearm in furtherance of such crime of violence, which firearm was brandished.

(Title 18, United States Code, Sections 924(c) (1) (A) (i), 924(c) (1) (A) (ii), 2 and 3551 et seq.)

COUNT THREE

(Hobbs Act Robbery Conspiracy)

3. In or about September 2009, within the Eastern District of New York, the defendants KATOSH PANTOLIANO, also known as "K," and ANTHONY TUOZZO, together with others, did knowingly and intentionally conspire to obstruct, delay and affect commerce, and the movement of articles and commodities in commerce, by robbery, to wit: the robbery of United States currency from John Doe, an employee of a restaurant located in Brooklyn, New York, whose identity is known to the Grand Jury.

(Title 18, United States Code, Sections 1951(a) and 3551 et seq.)

COUNT FOUR  
(Hobbs Act Robbery)

4. On or about September 28, 2009, within the Eastern District of New York, the defendants KATOSH PANTOLIANO, also known as "K," and ANTHONY TUOZZO, together with others, did knowingly and intentionally obstruct, delay and affect commerce, and the movement of articles and commodities in commerce, by robbery, to wit: the robbery of United States currency from John Doe, an employee of a restaurant located in Brooklyn, New York.

(Title 18, United States Code, Sections 1951(a), 2 and 3551 et seq.)

COUNT FIVE  
(Discharge of a Firearm During a Crime of Violence)

5. On or about September 28, 2009, within the Eastern District of New York, the defendants KATOSH PANTOLIANO, also known as "K," and ANTHONY TUOZZO, together with others, did knowingly and intentionally use and carry a firearm during and in relation to one or more crimes of violence, to wit: the crimes charged in Counts Three and Four, and did knowingly and intentionally possess said firearm in furtherance of such crimes of violence, which firearm was brandished and discharged.

(Title 18, United States Code, Sections 924(c) (1) (A) (i), 924(c) (1) (A) (ii), 924(c) (1) (A) (iii), 2 and 3551 et seq.)

No.

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# UNITED STATES DISTRICT COURT

EASTERN *District of* NEW YORK

CRIMINAL DIVISION

---

THE UNITED STATES OF AMERICA

vs.

*Katosh Pantoliano, also known as "K," and  
Anthony Tuozzo,*

Defendant.

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## SUPERSEDING INDICTMENT

(T. 18, U.S.C., §§ 924, 924(c)(1)(A)(i),  
924(c)(1)(A)(ii), 924(c)(1)(A)(iii), 924(d), 981(a)(1)(C), 1951(a), 2  
and 3551 et seq.; T. 21, U.S.C., 853(p); T. 28, U.S.C., 2461(c));  
T. 8, U.S.C., §§ 1326(a) and 1326(b)(1); T. 18, U.S.C., § 3551 et seq.)

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*A true bill.*

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*Foreman*

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*Filed in open court this* ----- *day,*

*of* ----- *A.D. 20* -----

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*Clerk*

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*Bail, \$* -----

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*Celia A. Cohen, Assistant U.S. Attorney (718-254-6147)*